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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA for the )  
use and benefit of TILMO PAINTING )  
LLC, )

Plaintiff, )

vs. )

KIEWIT BUILDING GROUP INC., )  
TRAVELERS CASUALTY & SURETY CO )  
OF AMERICA, )

Defendants. )

**JURY DEMAND**

Case No. \_\_\_\_\_

**COMPLAINT**

Use-Plaintiff Tilmo Painting LLC, for its Complaint, states and alleges as follows:

**I. JURISDICTION**

1. Use-Plaintiff Tilmo Painting LLC (“Tilmo”) is an Alaska Limited Liability Company with its principal place of business in Anchorage. Tilmo is in good standing with the State of Alaska and is in all ways qualified to commence and maintain this action.

2. Defendant Kiewit Building Group Inc. (“Kiewit”) is a Delaware corporation doing business within the state of Alaska. Kiewit maintains an office in Anchorage.

3. Defendant Travelers Casualty & Surety Co of America (“Travelers”) is a Connecticut corporation engaged, inter alia, in the surety business within the State of Alaska.

4. This is a claim under the Miller Act, 40 U.S.C. § 3131. This Court has jurisdiction pursuant to 40 U.S.C. § 3133. This Court also has jurisdiction pursuant to 28 U.S.C. § 1332 in that the Plaintiff and Defendants are citizens of different states and the amount in controversy exceeds \$75,000.

5. Venue is proper in this District because the contract was to be performed and executed within the District of Alaska, Tilmo and Kiewit maintain offices here, and Travelers issued its bond in this District.

## **II. CLAIM ON CONTRACT**

6. Tilmo realleges and incorporates by reference the allegations contained in paragraphs 1 through 5 above.

7. Kiewit is general contractor on the project known as “Design/Construct Barracks (FTW336B) Aviation Task Force – Phase I, Fort Wainright, Alaska”. Kiewit and Tilmo entered a subcontract pursuant to which Tilmo agreed to provide certain painting services to the project.

8. At the special instance and direction of Kiewit, Tilmo performed additional work beyond that provided for in the base subcontract. The parties agreed that Tilmo would be paid for such additional work on a time and material basis. Approximately \$300,000 remains unpaid for the time and material work.

9. More than 90 days has elapsed since the last work performed by Tilmo on the above-referenced project. Kiewit has failed and refused to pay any part of the sum due, despite Tilmo's demand.

10. Tilmo has performed or satisfied all conditions precedent to the recovery sought herein.

11. Kiewit now owes Tilmo the approximate sum of \$300,000, the exact amount to be proven at trial, which sum is not subject to offsets or deductions of any kind.

### **III. CLAIM FOR QUANTUM MERUIT**

12. Tilmo realleges and incorporates by reference the allegations contained in paragraphs 1 through 11 above.

13. Tilmo has conveyed a benefit upon Kiewit by reason of the uncompensated time and material work performed by Tilmo. Retention of such benefit by Kiewit would be unjust, and Tilmo is accordingly entitled to recover the reasonable value of the benefit conferred.

### **IV. CLAIM ON BOND**

14. Tilmo realleges and incorporates by reference the allegations contained in paragraphs 1 through 13 above.

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15. Defendant Travelers, as surety, posted a payment bond, with Kiewit as principal, to insure payment of sums due subcontractors and materialmen on the above-referenced project. Tilmo is among the class of parties intended to be protected by said bond, and is accordingly entitled to make claim thereon.

16. Travelers is jointly and severally liable with Kiewit for the sums due Tilmo pursuant to 40 U.S.C. § 3131.

WHEREFORE, Use-Plaintiff Tilmo Painting LLC prays for judgment as follows:

1. for a monetary judgment in the approximate principal amount of \$300,000, the exact amount to be proven at trial, jointly and severally, against Defendants Kiewit Building Group Inc. and Travelers Casualty & Surety Co of America;
2. for interest as provided by law;
3. for Use-Plaintiff's costs and attorney's fees incurred herein; and
4. for such other relief as the Court may deem appropriate and equitable in the circumstances.

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